IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : **10/529,778**

Applicant : **EPSTEIN et al.**

Filed : **3/30/2005**

Confirmation : **2264**

TC/A.U. : **2436**

Examiner : **SHIFERAW, Eleni A.**

Atty. Docket : **US020358US**

Title: **VERIFYING A NODE ON A NETWORK**

Mail Stop: **APPEAL BRIEF - PATENTS**
Commissioner for Patents
Alexandria, VA 22313-1450

REPLY BRIEF UNDER 37 CFR 41.41

Sir:

This is a Reply Brief in response to the Examiner's answer dated 14 September 2010 in the subject application.

CHANGE TO CLAIMS UNDER APPEAL

In the interest of advancing prosecution in this case, the applicants withdraw their request for the Board's consideration of the provisional rejection of claims 1-4, 6-7, and 9-12 on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-5, 8-9, and 11-14 of copending application 10/529,353 (hereinafter Rosner) in view of Liao et al. (USP 6,717,915, hereinafter Liao).

Upon a determination of allowability of these claims except for this provisional rejection, a Terminal Disclaimer will be submitted.

RESTATEMENT OF GROUNDS OF REJECTION FOR CLAIMS UNDER APPEAL

Claims 1-21 stand rejected by the Examiner under 35 U.S.C. 103(a) over Lundkvist (USPA 2003/0184431) in view of Fletcher et al. (USP 6,363,477, hereinafter Fletcher)[1].

REMARKS REGARDING EXAMINER'S ANSWER

The Examiner acknowledges that Lundkvist fails to disclose a response from the target node that includes a measure of processing time required to generate the response based on a query, and asserts that Fletcher discloses this feature at column 18, lines 28-63 and claim 8. This assertion is incorrect.

The applicants acknowledge that Fletcher discloses a technique for determining the processing time, but note that this processing time is not determined before the response is sent, and thus ***cannot*** be included in the response, as asserted by the Examiner.

Fletcher discloses a conventional time-stamp method of collecting timing data for subsequent timing analysis. A first time-stamp is added to a message before it is sent, and a second time-stamp is added to the message after it is received. Of particular note, only the first time-stamp is sent from a node, the second time-stamp is added after the message is received. A single time-stamp provides no information regarding a time duration, such as a measure of processing time, and thus the message from a node, with one time-stamp, cannot be said to correspond to the claimed response from a target node that includes a measure of processing time. A measure of processing time is a measure of duration, which ***cannot*** be conveyed using a single time-stamp.

[1] The Examiner notes, on page 3, that the citation to Davis (USP 6,088,450) in the final rejection was a typographical error, but the restatement of the rejection, on page 6, includes Davis. The applicants assume that this is a continuation of the typographical error.

With the two time-stamps assigned to each message, after the message is received, the duration of the transmission can be determined. However, even with both time-stamps, the processing time at a given node cannot be determined. In order to determine the processing time, using Fletcher's time-stamping method, the collected messages with time-stamps must be correlated to determine which messages correspond to a query-response pair (Fletcher's FIG. 11, step 1120). Without this correlation, the processing time at a given node ***cannot*** be determined based on the time-stamps.

Fletcher uses four time-stamps, T1, T2 associated with the query message, and T3, T4 associated with the response message, and discloses that the application processing time is equal to the difference between T3 and T2. Of particular note, these two time-stamps are associated with two different messages. Fletcher's technique requires that both messages, each with both time-stamps, be available at the correlator for Fletcher's system to determine the measure of processing time (T3-T2). This is clearly evident in Fletcher's FIG. 11, wherein the messages from the client to the server are processed at steps 1110, 1115, 1116, the messages from the server to the client are processed in steps 1111, 1117, 1118, and the output time-stamps from both steps 1116 (T1, T2) and 1118 (T3, T4) are separately provided to the correlation step 1120. Without both sets of time-stamps, Fletcher's system ***cannot*** determine the application processing time (T3-T2).

Further, because Fletcher's system performs this calculation of application processing time, as well as other time durations, after all four time-stamps are added, including the time of receipt of the response from the server (T4), Fletcher's system ***cannot*** include the subsequently determined processing time (T3-T2) in the already-received message that provides T3. This sequence of operations is also clearly illustrated in Fletcher's FIG. 10. The requests and responses are selected and time-stamped at 1051, 1052, then the requests and responses are correlated at 1053. ***After receiving and correlating the time-stamped requests and responses***, the time-stamp differences, including the difference T3-T2 corresponding to the application ***processing time***, are determined, at 1054.

In response to the applicants' prior argument that Fletcher's response does not include a measure of processing time, the Examiner states that the "argument is not persuasive because the time-stamps are processing time measurement since they provide an accurate measure of when the data packets are transmitted and received (see col. 18 lines 12-17) and the 'time-stamps' applied to response data packet 395 are utilized to determine the file transfer rate from the server to the client computer system (see col. 16 lines 50-55)" (Examiner's Answer, page 14, lines 1-5). The applicants respectfully maintain that this statement is misleading, and inconsistent with Fletcher's disclosure.

Of particular note, as the Examiner points out, the time-stamps provide an accurate measure of when the packets are transmitted and received. Of and by themselves, however, the time-stamps associated with each packet can only provide information regarding the transmission duration, or transfer duration/rate, as also pointed out by the Examiner. The fact that the time-stamps on each packet indicate a measure of the ***transfer rate*** has ***no bearing*** on the claimed inclusion of a measure of ***processing time*** in a response to a query.

The Examiner further asserts: "The time-stamps T2 and T3 are stamped and included on the response message 395 (see col. 18 lines 12-17 and figs. 3 and 8)" (Examiner's Answer, page 14, lines 5-6). This assertion is ***incorrect***.

The cited text and figures do not disclose the content of response message 395; instead, Fletcher's FIG. 11 clearly indicates that time-stamp T2 is included in the message from the client to the server (step 1116), corresponding to message 390 (***not 395***) in Fletcher's FIG. 8, and that time-stamp T3 is included in the message from the server to the client (step 1118), corresponding to message 395 in Fletcher's FIG. 8.

Fletcher's time **T2** corresponds to the time-stamp that is applied to the **data request** upon receipt, and **T3** corresponds to the time-stamp that is applied to the **response** before transmission, and Fletcher specifically discloses:

> "In this embodiment, the present invention computes the application processing time using the time-stamps of each correlated data packet, by computing the difference between the ***time-stamp applied to request data packet 390*** by the layered service provider of server computer system 350 and the ***time-stamp applied to correlated response data packet 395*** by the layered service provider of server computer system 350" (Fletcher column 15, line 66 – column 16, line 7).

As is clearly evident, Fletcher clearly discloses that the processing time is determined based on time-stamps T2 and T3 in two ***different*** packets 390 and 395, respectively, contrary to the Examiner's assertion that these two time-stamps are in the same packet 395.

CONCLUSIONS

Because the combination of Lundkvist and Fletcher fails to teach or suggest a response from the target node that includes a measure of processing time required to generate the response based on the query, and because the Examiner has failed to identify where the combination provides this teaching, and because the Examiner has mischaracterized Fletcher, the applicants respectfully request that the Examiner's rejection of claims 1-21under 35 U.S.C. 103(a) be reversed by the Board, and the claims be allowed to pass to issue.

Respectfully submitted,

/Robert M. McDermott/
Robert M. McDermott, Esq.
Registration Number 41,508
Phone: 804-493-0707
for: Kevin C. Ecker
Reg. 43,600
914-333-9618

Please direct all correspondence to:
Corporate Counsel
Philips Intellectual Property and Standards
P.O. Box 3001
Briarcliff Manor, NY 10510-8001
Phone: (914) 333-9618
Fax: (914) 332-0615